

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2016

CORAM:

THE HONOURABLE MR . JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Criminal Appeal No.480 of 2012

Rajan ... Appellant/Accused No.3

-Vs-

State rep.by
Inspector of Police
Mettupalayam Police Station
Mettupalayam
Coimbatore District.
(Cr.No.973/2007)

... Respondent/Complainant

This Criminal Appeal has been preferred to set aside the judgment dated 11.06.2010 passed by the learned Additional District and Sessions Judge, Fast Track Court No.I, Coimbatore in S.C.No.298 of 2008 convicting the appellant for offence under Section 120(b), 302 r/w 34 and 201 r/w 109 IPC and thereby sentenced the appellant to undergo R.I. for 5 years and to pay a fine of Rs.2,000/- in default R.I for one year u/s 120(B) IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default R.I. for two years u/s 302 IPC r/w 34 IPC and sentenced to undergo R.I. for 5 years and to pay a fine of Rs.2,000/- in default R.I. for one year u/s 201 r/w 109 IPC.

For Appellant : Mr.L.Mouli

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by S.NAGAMUTHU, J.)

The appellant is the third accused in S.C.No.298 of 2008 on the file of the learned Additional District and

Sessions Judge, Fast Track Court No.1, Coimbatore. He stood charged for offences under Sections 120(B), 302 r/w Sec.149 and 34 IPC and Section 201 r/w 109 IPC. Including the appellant, there were five accused. By judgment dated 11.06.2010, the trial Court, convicted the accused 1 and 3. The second accused died during trial and therefore, the charge against him abated. So far as the appellant/accused 3 is concerned, he was convicted for offence under Section 120(B) and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.2,000/-, in default to undergo rigorous imprisonment for one year; for offence under Section 302 r/w 34 IPC, he was sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default to undergo rigorous imprisonment for two years; and for the offence under Section 201 r/w 109 IPC, he was sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.2,000/-, in default to undergo rigorous imprisonment for one year. Challenging the said conviction and sentence, the accused/appellant is before this Court with this appeal.

2. The case of the prosecution, in brief, is as follows:

The deceased in this case was one Mr.Muralidharan. P.W.7-Mrs.Jaya Priya is his wife and P.W.6 is his brother-in-law. The deceased was a goldsmith by profession. P.W.10 - Thamarai Kannan was doing gold business. He used to give gold to the deceased for making jewels. The first accused was doing gold jewels polishing business. On 21.07.2007, at about 7.30 a.m. the deceased took 91 pairs of ear drops and went to the shop of the first accused for the purpose of polishing the same. The deceased told his wife that, he would get back the jewels after polishing and return. But the deceased did not return till the evening. Therefore, P.W.7 informed P.W.6, namely her brother about the same. P.W.6 went in search of the deceased to the shop of the first accused, but the shop of the first accused was found closed. P.Ws.8 and 9, who were having shops by the side of the shop of the first accused told him that, by about 8.00 a.m. on 21.07.2007, the first accused and the deceased had come in a motor bike bearing Registration No.TN-37-AR-2071 belonging to the deceased. In yet another motor cycle, the accused 4 and 5 came along with them. Thereafter, they left. P.Ws.8 and 9 have further stated that they were under the impression that it was a routine affair and therefore, they did not take it seriously. When P.W.6 came in search of the deceased, P.Ws.8 and 9 told him about the same. Thereafter, P.Ws.6 and 7 searched for the deceased, but in vain. The first accused also was not seen anywhere. While so, P.W.2-the Village Assistant of Bellari

Village found a dead body of a male at 8.00 p.m. on 21.07.2007 near the Old Age Home on the Mettupalayam to Allur route. The body was found half burnt. P.W.2 immediately informed P.W.1-the Village Administrative Officer. P.W.1 on the said information, went to the place and found the dead body. He found extensive burn injuries on the body. There were grey colour full hand shirt, light blue colour pant and a black colour string on the body. Immediately, he proceeded to Sirumugai Police Station and made a complaint at 9.30 p.m. P.W.26, a Head Constable of Sirumugai Police Station, on receipt of the said complaint under Ex.P1, registered a case in Cr.No.164/2007 under Section 174 Cr.P.C. at 9.30 p.m. He handed over the case diary to the Inspector of Police for investigation.

3. P.W.29, the then Inspector of Police of Sirumugai Police Station took up the case for investigation, proceeded to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch, in the presence of witnesses. He also recovered the pant, shirt and the black colour waist thread from the body of the deceased. Near the dead body, on the north of it, one 180ml empty whisky bottle was found with petrol smell. He recovered the same under Mahazar in the presence of the same witnesses. He arranged for photographs to be taken at the place of occurrence where the body of the deceased was found. M.O.21 series are the photographs. Since the identity of the body was not known, he made arrangements for giving wide publication through the newspaper. A photograph of the dead body was given to 'Dinakaran' newspaper circulated in that area. On seeing the newspaper report, P.Ws.6 and 7 went to the police station. On seeing the Material Objects recovered from the body, they identified the same as that of the deceased. Then, the Inspector of Police took them to the hospital and on seeing the dead body, they identified the same as that of the deceased.

4. P.W.22 - Dr.Jeyasingh conducted autopsy on the body of the deceased on 24.07.2007 at 12.30 p.m. He found the following injuries:

"The following postmortem injuries noted on the body.

Extensive superficial burns noted on the front of chest, upper 1/3rd abdomen, left upper limb, lower 1/3rd abdomen, front of right upper thigh, front of right leg, inner aspect of left thigh and leg. The base of the burnt area is yellow white in colour.

Blackening of the skin and singeing of hairs noted on the burnt areas and top of the scalp.

The following antemortem injuries noted on the body.

1. Scratch abrasions noted on the following region: a) 1x 0.5cm on left cheek 2 cm above to left angle of mouth. b) 1.5 x 0.75 cm on left upper cheek 2cm below to left eye. c) 2 x 1 cm on right upper cheek 1cm below to right eye. d) 2 x 0.5 cm on right lateral cheek 4cm away from right eye. e) 1 x 0.25 cm on right temple f) 0.75 x 0.25 cm on right cheek 3 cm away from right alae of nose. g) 2 x 1 cm on outer left upper arm. h) 6 x 2 cm on outer left lower arm. i) 4 x 3 cm on back of left wrist. j) 24 x 2 cm on outer hip and thigh, k) 3 x 2 cm on outer right lower leg. l) 4 x 2 cm on back of right thigh.

2) Contusion noted on the following region.

a) 5 x 2 cm on inner aspect of left lower lip. b) 3 x 1.5 cm on inner aspect of left upper lip. c) 2 x 1 cm on top of right shoulder.

On dissection of scalp skull dura - Sub scalp contusion 4 x 2 cm noted on right frontal and 6 x 4 cm on right occipital region. Diffuse subarachnoid hemorrhage noted on both cerebral hemispheres. Brain tissue softened and cut section congested."

Ex.P7 is the Post-mortem Certificate. Viscera was preserved and sent for chemical examination. The chemical examination revealed that, the deceased had consumed cyanide poison. The Doctor therefore, gave opinion that the deceased had died due to consumption of cyanide poison. He further opined that, there were also contusions on the body of the deceased, which could have been caused by attacking with a wooden log. While so, on 30.07.2007, the first accused met P.W.21 at Gandhi Park in Coimbatore, while he was on routine walk. At that time, the first accused told P.W.21 that, he committed murder of the

deceased and he had also taken away the jewels. P.W.21 reduced the same into writing under Ex.P5. Then he produced the first accused along with the statement under Ex.P5 to P.W.29. At 8.45 a.m., on 30.07.2007, P.W.29 arrested the first accused. On such arrest, he made a voluntary confession in the presence of the same witnesses, in which he disclosed the identity of the other accused.

5. The first accused took P.W.29 and the witnesses to Mettupalayam Naduvur Karupparayan lane and identified the second accused. At 10.45 a.m., P.W.29 arrested him in the presence of the same witnesses. On such arrest, he gave voluntary confession, in which he disclosed the place where he had hidden the motor cycle bearing Registration No.TN-37-AR-2071 and also cash of Rs.9,000/-. P.W.29 recovered the same under appropriate mahazars in the presence of the same witnesses. Then, in pursuance of the confession of the accused 1 and 2, P.W.29 along with them and witnesses, went to Masiyaniamman Kovil Street, where they identified the third accused. At 12.45 p.m., he arrested the third accused in the presence of the same witnesses. He made a disclosure statement that he would identify the place where he had hidden the cellphone. Accordingly, he took the police to the house and produced a cellphone and also cash of Rs.3,900/-. P.W.29 recovered the same under a mahazar. Then all the three accused took the police and the witnesses to Kovai Nadar Street and identified the accused 4 and 5. At 3.30 p.m., P.W.29 arrested them. In pursuance of the confession given by the first accused, P.W.29 went to the shop of Dadasa at Kumaran Street, where the first accused had sold a gold ingot weighing 98 gms. P.W.29 recovered the same in the presence of the witnesses at 11.45 a.m. under the mahazar. Then, the first accused took the police and the witnesses to the same Kumaran Street and identified one Suresh Kumar, from whom a sum of Rs.15,000/- was recovered at 2.30 p.m. Then, the first accused took the police and the witnesses to Sundaram Street and identified one Chandra Sekar, from whom a sum of Rs.5,000/- was recovered. Then, the first accused took the police and the witnesses to Raja street and identified one Prabhu near a car stand, from whom, a sum of Rs.20,000/- was recovered. Then, he took the police and the witnesses to Robertson road and identified one Pratab near milk company, from whom a sum of Rs.12,000/- was recovered under the Mahazar. Then, he took the police and the witnesses to Subam Theatre, where the deceased was given cyanide mixed in beer. There, P.W.29 prepared an Observation Mahazar and a Rough Sketch. On returning to the police station, he forwarded the documents to the Court and handed over the Material Objects also. He made a request to the Court for forwarding the Material Objects for chemical analysis. On

completing the investigation, he laid charge sheet against the accused.

6. Based on the above materials, the trial Court framed the above charges as stated in the first paragraph of this judgment. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 31 witnesses were examined and 27 documents were exhibited, besides 21 material objects.

7. Out of the said witnesses, P.W.2 has stated that he found the dead body at Mettupalayam Road near Old Age Home. P.W.1 has spoken about the complaint made by him. P.Ws.3 and 4 have stated that they saw the dead body at the place of occurrence. P.W.5, the taxi driver has stated about the preparation of the Observation Mahazar and Rough Sketch by P.W.29 from the place of occurrence and he has also spoken about the recovery of Material Objects from the place of occurrence. P.W.6, the brother-in-law of the deceased has spoken about the fact that, they went in search of the accused on the day when he left and he has further stated that, on 23.07.2007 he found the photograph of the dead body of the deceased published in Dinakaran newspaper and thereafter, he identified the dead body at the police station. P.W.7-wife of the deceased has also stated so. P.W.8 has stated that on 21.07.2007 at about 8.00 a.m., at Kovai Kumaran Street, he found the accused and the deceased coming in a motor cycle followed by the accused 4 and 5 in another motor cycle. P.W.9 has stated that on 21.07.2007 at 7.30 a.m., he found the first accused and the deceased going in a motor cycle and he has also stated that the accused 4 and 5 followed them in another motor cycle. P.Ws.8 and 9 have stated that they identified the ingots recovered from the accused. P.W.12 has stated that the first accused gave him a gold ingot weighing 98 gms, for which he paid Rs.82,000/- and the same happened on 21.07.2007. P.W.13 has stated that on 22.07.2007, at 12 noon, the first accused gave him 18 gms of gold ingot for Rs.15,000/- and the same was purchased by him. He further stated that he handed over the same to the police station. P.W.14 has stated that on 30.07.2007 at 6.45 p.m., the first accused gave him Rs.20,000/- to discharge the loan due to him. P.W.15 has stated that on 21.07.2007, the first accused discharged the loan which he had raised earlier. P.W.16 has stated that on 21.07.2007 at 5.30 p.m., the accused gave him Rs.12,000/- in discharge of dues from him. P.W.17 has stated that on 20.07.2007, at about 10.00 p.m., the shop of the first accused was kept opened, where he found the accused 1,4 and 5 inside the shop. P.W.18 claims to be the eye witness for the

occurrence. According to him, on 21.07.2007, at 7.00 p.m., he was standing in front of a TASMAC shop in Co-operative Colony and at that time, one person roughly aged about 30 years fell down, on account of fits. Two to three people who were standing there, took him in a motor cycle. According to him, the persons who took the deceased from the spot are the accused 1 to 3. P.W.19 has also stated as though he was standing along with P.W.18. P.W.20 has turned hostile and he has not supported the prosecution case. P.W.21 has spoken about the confession given by the first accused. P.W.22 has spoken about the post-mortem conducted and his final opinion regarding the cause of death. P.W.24 has spoken about the arrest of all the accused and consequent recovery of the Material Objects. P.W.25 stated that he visited the place of occurrence as Scientific Expert, but he was not able to lift any useful material from the place of occurrence. P.W.26 has spoken about the registration of the case. P.Ws.29 and 31 have spoken about the investigation. The others are official witnesses.

8. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. Their defence was a total denial. On their side, one Selvaraj was examined as D.W.1. According to D.W.1-Selvaraj, on 24.07.2007, at about 10.30 a.m. two policemen came to his workshop and wanted him to identify the house of the fourth accused. Accordingly, he identified, from where the fourth accused was taken into custody. Later, according to him, he was remanded to judicial custody.

9. Having considered all the above, the trial Court convicted all the three accused as stated in the first paragraph of this judgment. Aggrieved over the same, the appellant/accused 3 is before this Court with this appeal.

10. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

11. This is a case based on circumstantial evidence. At the outset, we should say that in a case of circumstantial evidence, it is absolutely necessary for the prosecution to prove the circumstances projected by the prosecution beyond reasonable doubts and all such proved circumstances should form a complete chain without any break, so as to unerringly point to the guilt of the accused and there should not be any hypothesis which is

inconsistent with the guilt of the accused. Keeping the above broad principles in mind, let us now go into the facts of the case.

12. P.W.7-the wife of the deceased has stated that, the deceased left the house on 21.07.2007 at about 7.30 a.m. informing her that he was going to the shop of the first accused for the purpose of getting back the polished gold ornaments which he had earlier given. Thus, from her evidence, it is crystal clear that the deceased was seen alive on 21.07.2007 at 7.30 a.m. Thereafter, at 8.00 a.m. on 21.07.2007, according to P.W.8, the deceased and the accused were seen together in a motor cycle, followed by accused 4 and 5 in another motor cycle. The same has been spoken to by P.W.9 also. Thus, according to these witnesses, at 8.00 a.m., the deceased was found alive lastly.

13. At this juncture, the evidence of P.W.17 assumes importance. According to him, on 20.07.2007 at 10.00 p.m., when he went to the shop of the first accused, he found accused 1, 4 and 5 inside the shop. At that time, it is stated that they were talking among themselves that, by giving cyanide, jewels could be taken from Murali. Had it been true that he had seen these accused conspiring so, by all natural conduct, he would have disclosed the same to others. He himself is a business man dealing in gold. The deceased was his friend. Therefore, if it is true that accused 1, 4 and 5 were found conspiring to kill the deceased by giving cyanide, he would not have restrained himself without informing the same to his family members. Thus, the conduct of P.W.17 makes his evidence unbelievable. Further, he has not stated anything against this appellant. Therefore, we reject his evidence.

14. P.W.18 has stated that at Co-operative Colony in Mettupalayam at about 7.00 p.m. on 21.07.2007, one person fell down as though he was affected by fits. He was carried by accused 1 to 3 in a motor cycle, he has stated. This is also highly unbelievable, for the simple reason that, he has not stated that the person who fainted and taken by these accused was the deceased. Further, he had not disclosed about the same to anybody for a long time. Therefore, his evidence also cannot be believed.

15. P.W.19 is yet another witness who has stated that, on 21.07.2007 at 7.00 p.m. when he was in his shop known as 'Murugan Tiffin Stall' at Mettupalayam, the first accused came there and along with him there was yet another person. The person who accompanied the first accused fell down on account of fits. The people who were standing there cried

for help. Then, the accused 1 and 2 took that person to hospital. Even here, this witness has also not stated that it was the deceased who was taken to hospital and he does not disclose about this to anybody for a long time. Thus, as we have done in the case of P.W.18, we have to reject the evidence of P.W.19 also.

16. Thus, from the evidence as of now available, except the fact that the deceased was found alive at 8.00 a.m. on 21.07.2007, there is no evidence that he was found alive anywhere else subsequently.

17. Thereafter, the dead body was found by P.Ws.1 and 2. On the complaint made by P.W.1, P.W.29 started the investigation. During the course of investigation, it is stated that the first accused was arrested. On his confession, the rest of the accused were arrested. Some Material Objects have been recovered on the disclosure statement made by the first accused. But so far as the present appellant is concerned, nothing was recovered from him and there is no other evidence against him. Further, this accused was not even found in the company of the deceased. Thus, though there appears to be some evidence against the first accused and the rest of the accused, as against this appellant, absolutely there is no evidence. Therefore, the appellant is entitled for acquittal as the prosecution has failed to prove the charges against him.

In the result, the appeal is allowed and the conviction and sentence imposed on the appellant by the learned Additional District and Sessions Judge, Fast Track Court No.1, Coimbatore on 11.06.2010 in S.C.No.298 of 2008 are set aside and the appellant is acquitted of all the charges. Fine amount, if any paid by the appellant, shall be refunded to him.

सत्यमेव जयते

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate,
Mettupalayam.

2.-Do- Thro The chief Judicial Magistrate,
Coimbatore.

3. Additional District and Sessions Judge,
Fast Track Court No.I, Coimbatore.

4.-Do- Thro The Principal Sessions Judge,
Coimbatore.

5.The Superintendent Central Prison,
Coimbatore.

6.The Inspector of Police
Mettupalayam Police Station
Mettupalayam
Coimbatore District.

7.The District Collector,
Coimbatore.

8.The Director General of Police,
Mylapore, Chennai.

9.The Public Prosecutor
High Court, Chennai.

+1cc to Mr.Mouli, Advocate Sr.7508

Crl.A.No.480 of 2012

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